

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.166 OF 2007

Rajan Mukund Patil	Petitioner
versus	
Sujay Mangesh Poyarekar & anr.	Respondents

Mr.Samir A. Vaidya for applicant.
Ms.M.H.Mhatre, APP for State.

CORAM : V.C.DAGA, J.

DATE : 18th July 2007

PC :

1. Heard learned counsel for the applicant. After having heard him against the order dated 16th January 2007 passed by the Third Ad-hoc Additional Sessions Judge, Palghar whereby the accused-respondent came to be acquitted of the offences punishable under sections 307, 504 of IPC as per the provisions of Section 235(1) of Code of Criminal Procedure, 1973, with the assistance of the learned counsel I have gone through the evidence available on record and the recovery report. I was also taken through the impugned judgment and the findings recorded therein. The learned Third Ad-hoc Additional

Sessions Judge after appreciating the evidence in detail in paragraphs 29 and 30 has observed as under :-

"29. After taking into consideration the over all evidence of the prosecution and considering the defence of the accused, I am of the opinion that the defence counsel successfully established the enmity between the complainant and the accused and on the day of incident i.e. on 7.6.2003 around 6.15 p.m. there was scuffle between the complainant and the accused on count of wife of accused. However, the prosecution failed to prove beyond all reasonable doubts that the accused stabbed him by means of knife on his stomach as well as on shoulder and below arm-pit etc.

30. It is worthy to note here that though the spot is a crowded place and there were so many commuters as well as railway staff members and other vendors, the prosecution could not examine a single witness who stated on oath that he had seen the accused while stabbing the complainant by means of knife. On the other hand the testimony of PW 3 Gajanan Divekar reveals that there was scuffle between one woman and Advocate Rajan Patil which supports the defence case. Similarly the testimony of PW 9 Nareshkumar Sharma, the Station Master of Vangaon Railway Station supports the defence case. It came in his version that on 7.6.2003 around 6.15 p.m. one man came running to his cabin and said man told him that one man was teasing his wife and outraging her modesty and when he went to save his wife, the said man also bet him by means of briefcase. So also it reveals from the testimony of PW 11 Dr.Padmaja Doijode who examined accused by Mangesh Poyarekar that on 8.6.2003 she had examined one Sujay Mangesh Poyarekar and she found three injuries as mentioned in Exh.32. Perusal

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of Exh.32 reveals that Sujay Mangesh Poyarekar was examined on 8.6.2003 around 1.00 a.m. by Medical Officer Rural Hospital, Palghar and the said Medical Officer observed three abrasion injuries on left shoulder and on right upper limb. it is further mentioned in the said injury certificate Exh.32 that the said injuries were within 24 hours and they were caused by hard and blunt object. The findings of the said injuries on the person of the accused supports his defence that he was beaten by R.M.Patil by brief-case. The prosecution failed to explain the injuries found on the person of accused. Hence I am convinced with the defence of the accused."

2. After discussing the case law the learned Trial Judge has observed in paragraph 33 as under:-

"33. From the statement of accused recorded under Section 313(1)(b) Cr.P.C. coupled with documents filed with Exh.57 and from tenor of cross examination, I am of opinion that accused established his defence by preponderance of probabilities. It is needless to mention here that the accused is not required to prove his defence beyond reasonable doubt but the defence raised by them should be sufficient to create doubt in the mind of the Court. If the accused succeed in creating such doubt, they must be given benefit of doubt. After considering the overall evidence, I am of opinion that defence raised by accused is sufficient to create doubt in my mind."

3. Having taken stock of the facts and appreciation thereof, in the light of the

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findings recorded the text of which is extracted above, the entire case revolves around appreciation of the evidence. In my considered opinion, the evidence has been properly appreciated and the view taken by the Court below is a reasonable and possible view. No case is made out to interfere with the impugned order. Criminal Revision Application is, therefore, dismissed in limine. No order as to costs.

(V.C.DAGA, J.)